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RECEIVED

JUN 16 2005

Federal Communications Commission
 Office of Secretary

JUN 16 2005
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Marlene H. Dortch, Secretary
 Federal Communications Commission
 The Portals, Room TW-A325
 445 12th Street, S.W.
 Washington, D.C. 20554

Re: **Response to Notice of Oral Ex Parte Presentations
 dated June 10, 2005 in MB Docket No. 04-75 filed by
 Max Media of Montana LLC and Destiny Licenses, LLC**

Dear Ms. Dortch:

On June 10, 2005, counsel for Max Media of Montana LLC ("Max") and for Destiny Licenses, LLC ("Destiny") filed a Notice of Oral *Ex Parte* Presentations (the "Notice") made to the staff of the Media Bureau, and others in the above-referenced proceeding. This is the sixth such Notice filed by Max and Destiny, although in some of the earlier contacts, Max was acting on its own before it had sold station KTGF(TV), Great Falls, Montana, to Destiny. Sunbelt is compelled to respond to some of claims put forth in this latest filing by Max/Destiny because the more desperate nature of their statements may have confused the purpose and limits of this proceeding and, in several key instances, have obfuscated the facts.

Local News. For example, it is the height of hypocrisy for Max/Destiny to try to support their fluid positions by reliance on the value of local news. "Local news programming is a major factor in determining the viewership of prime-time network programming. The absence of local news would diminish the value of network program distribution to any local market." *Notice*, p. 2. This is a statement with which Sunbelt totally agrees, but, as counsel for Max/Destiny both know well, KTGF(TV) broadcasts **no local news** - none, zero, zip, nothing. This is hardly the type of affiliate that would be attractive to a national network.

Enclosure 022
 022

K21DU. The novel argument advanced by Max/Destiny that a low power station, KBGF-LP owned by Beartooth Communications Company ("Beartooth"), a subsidiary of Sunbelt, can't be the NBC affiliate in Great Falls is without any factual or legal basis. It is truly baffling that Max would make this claim. Max has recently acquired KFBB-TV, Channel 5, the ABC affiliate in Great Falls. Max also acquired the ABC affiliate in Helena, K21DU, a translator station. That is correct - while Max squanders the Commission's time and resources arguing that a low power station can't be a full time network affiliate in Great Falls, it owns and operates a translator ABC network affiliate in Helena.

STA Operation. Likewise muddled and unfounded is the Max/Destiny assertion, again without legal support, that the fact that the Beartooth low power station in Great Falls is operating temporarily pursuant to special temporary authority ("STA") "only *sharpens* the reasons for not equating KBGF-LP with KTGF(TV) for the purposes of Section 73.658(b)." *Notice*, p. 1. While there is no logic to this assertion, perhaps, a more candid explanation of the STA would have included the facts that the permanent transmitter to be used at KBGF-LP was back ordered and would not be available until August or September, and that the manufacturer provided a temporary smaller transmitter to be used under the STA.¹

Max/Destiny's characterization of Beartooth's acquisition and activation of KBGF-LP as an "eleventh-hour" endeavor is misleading. While "so what" would seem to be an adequate response, their claim ignores the fact that Sunbelt/Beartooth filed applications for new low power and booster stations that could improve service to the immediate Great Falls area. Max opposed all of these applications; had it not done so, at least some of them would have been granted much earlier so that Beartooth would not have been forced to acquire KBGF-LP. Beartooth's acquisition and construction of KBGF-LP was not an eleventh-hour endeavor, it was simply an application that escaped Max's and Destiny's radar. The real "Eleventh Hour" deal was Max's sale of KTGF to Destiny in order to protect its deal to purchase KFBB. In fact, Max executed a last minute amendment of its purchase agreement in order to buy extra time to sell KTGF.

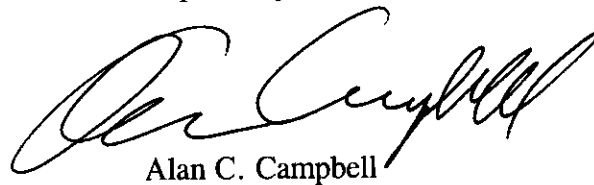
Improper Forum. Finally, as Sunbelt has contended, this proceeding is ill-conceived. Recall, that this declaratory ruling procedure was initiated as a result of "Max's indication that it is seeking a declaratory ruling rather than specific enforcement action." *See, Public Notice DA-04-747, March 19, 2004, p. 2.* Over time it is clear that what Max and now Destiny want is for the FCC to order NBC to affiliate with KTGF(TV), a proposition for which there is absolutely no regulatory authority or precedent, and is hardly relief that can be granted by a declaratory ruling. Indeed, in the latest filing to which this response is filed, Max asks the Commission to issue "an

¹ A copy of the STA request and the FCC grant is attached hereto. Incidentally, on June 14, 2005, Sunbelt filed a "Renewed Motion To Terminate This Proceeding". Attachment 1 to that Motion is a comparison of the coverage offered by KBGF-LP and KTGF(TV), using the low power station's permanent 50 kW ERP facilities, rather than its temporary STA facilities.

Marlene H. Dortch, Secretary
June 16, 2005
Page 3

Order to Show Cause why the licenses of all six stations under common ownership by Sunbelt... should not be revoked," *Notice*, p. 2, which certainly sounds like a request for an enforcement action. Moreover, the Max/Destiny position runs directly contrary to myriad instances where the Commission has eschewed involvement in private disputes, which in reality is what this is. If Max or Destiny truly feels wronged, they have judicial forums available to them.² And, if Destiny somehow feels hoodwinked by Max for selling it a station that was long scheduled to lose its network affiliation, a fact about which Max was well aware, it too has the right to seek judicial satisfaction against Max.

Respectfully submitted,



Alan C. Campbell

Attachment

cc Julian L. Shepard, Esquire
Erwin G. Krasnow, Esquire
Donna C. Gregg, Chief, Media Bureau
Roy H. Stewart, Senior Deputy Chief, Media Bureau
William H. Johnson, Deputy Bureau Chief
Robert H. Ratcliffe, Deputy Bureau Chief
John B. Norton, Deputy Chief of the Policy Division
Jane Gross
F. William LeBeau, Esquire
Kevin F. Reed, Esquire
Mr. John F. Damiano
J. Dominic Monahan, Esquire

² Of course, this avenue is compromised in the case of Max which released NBC from certain potential claims relating to KTGF(TV). *See*, Max "Request for Expedited Declaratory Ruling" filed February 25, 2004, Note 19.

SUNBELT

COMMUNICATIONS COMPANY

Committed to Excellence in Broadcasting and Education

Corporate Headquarters
1500 Foremaster Lane, Las Vegas, NV 89101
Phone -702-642-3333 - Fax 702-642-3093
Ch3@kvbc.com

ATTACHMENT

May 12, 2005

DELIVERY VIA FEDERAL EXPRESS

NBC Channel 3 - KVBC
Las Vegas, Nevada
702-642-3333

NBC Channel 4 - KRNV
Reno, Nevada
775-322-4444

NBC Channel 10 - KENV
Elko, Nevada
775-777-8500

NBC Channel 7 - KWNV
Winnemucca, Nevada
775-322-4444

NBC Channel 3 - KBJN
Ely, Nevada
702-642-3333

NBC Channel 9 - KBMO
Tonopah, Nevada
702-642-3333

NBC Channel 11 - KYMA
Yuma, Arizona
928-782-1111

NBC Channel 6 - KPVI
Pocatello, Idaho
208-232-6666

NBC Channel 12 - KTVH
Helena, Montana
406-457-1212

NBC Channel 9 - KBBJ
Havre, Montana
406-457-1212

NBC Channel 13 - KBAO
Lewistown, Montana
406-457-1212

NBC Channel 13 - KCWY
Casper, Wyoming
307-577-0013

NBC Channel 13 - KCHY
Cheyenne, Wyoming
307-577-0013

NBC Channel 2 - KJWY
Jackson, Wyoming
307-733-2066

NBC Channel 7 - KSWY
Sheridan, Wyoming
307-577-0013

FOX Channel 35 - KXTF
Twin Falls, Idaho
208-733-0035

Federal Communications Commission
c/o Mellon Client Service Center
500 Ross Street, Room 670
Pittsburgh, Pennsylvania 15259-0001

Attn: FCC Module Supervisor

RE: Special Temporary Authorization Request for KBGF-LP, Great Falls, Montana

Dear Sir or Madam:

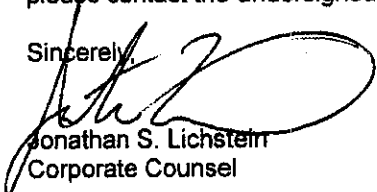
Beartooth Communications Company ("Beartooth"), the permittee of Low Power Television Station KBGF-LP, Great Falls, MT [Facility ID 128063], through its counsel, respectfully requests that the Commission grant a Special Temporary Authorization ("STA") to operate with reduced facilities.

Beartooth intends to begin new broadcast television service in Great Falls, MT on June 1, 2005. The transmitter required to operate according to the parameters listed in the construction permit (BMPTTL-20050223ACI) is on back order and will not be available to Beartooth until August or September 2005. The transmitter manufacturer has provided Beartooth with a smaller transmitter to operate in the interim period. Beartooth requests this STA in order to commence operations under reduced power.

An engineering statement in support of the STA request and the anti-drug abuse certification for Beartooth Communications Company is enclosed. The amount of \$150 is attached to cover the prescribed filing fee. Also enclosed is FCC Fee Remittance Advice Form 159.

Should additional information be desired concerning this request for Special Temporary Authorization, please contact the undersigned counsel.

Sincerely,


Jonathan S. Lichstein
Corporate Counsel

Enclosures

Cc: Kathy Ernst, Mike Anderson, David Feher

Other Sunbelt Companies



Las Vegas Locations
Rainbow and 95 North
West Sahara and Paseo del Prado
Stephanie and Warm Springs
Rampart and West Charleston



SUNBELT
AUTO COLLECTION
Antique and Classic
Automobile Sales
Las Vegas Office
702-642-1714

ANTI-DRUG ABUSE CERTIFICATION

Beartooth Communications Company certifies that neither it nor any party to this request is subject to the denial of federal benefits under §5301 of the Anti-Drug Abuse Act of 1988, 21 USC §862. This statement is to be associated with Beartooth Communications Company's request for Special Temporary Authorization to operate Station KBGF-LP at reduced power.



Gene Greenberg, Executive Vice President

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589
Page: 1 of 1

(1) LOCK BOX # 358185		SPECIAL USE ONLY	
		FCC USE ONLY	
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Beartooth Communications Company		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$150.00	
(4) STREET ADDRESS LINE NO. 1 1500 Foremaster Lane			
(5) STREET ADDRESS LINE NO. 2			
(6) CITY Las Vegas		(7) STATE NV	(8) ZIP CODE 89101
(9) DAYTIME TELEPHONE NUMBER (include area code) 7026423333		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0006206866		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME Beartooth Communications Company			
(14) STREET ADDRESS LINE NO. 1 1500 Foremaster Lane			
(15) STREET ADDRESS LINE NO. 2			
(16) CITY Las Vegas		(17) STATE NV	(18) ZIP CODE 89101
(19) DAYTIME TELEPHONE NUMBER (include area code) 7026423333		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) 0006206866		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID KBGF-LP	(24A) PAYMENT TYPE CODE MGL	(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC) \$150.00	(27A) TOTAL FEE \$150.00	FCC USE ONLY	
(28A) FCC CODE 1 128063		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, <u>Andrei S. Chelakini</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.			
SIGNATURE <u>[Signature]</u>		DATE _____	
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.			
SIGNATURE _____		DATE _____	

**KBGF-LP GREAT FALLS, MONTANA
SPECIAL TEMPORARY AUTHORITY
ENGINEERING STATEMENT**

The information and statements contained herein and attached hereto are prepared for BEARTOOTH COMMUNICATIONS COMPANY, holder of Construction Permit (CP) of Low Power Television Station KBGF-LP in Great Falls, Montana, File Number BMPTTL-20050223ACI and are in support of the request for a Special Temporary Authorization (STA) to operate at reduced power from that specified in the CP at 50 kW Effective Radiated Power (ERP).

Due to the unavailability of the intended permanent transmitter for this installation until late summer to early fall of 2005, we intend, and hereby request, to operate with an alternate transmitter but at the reduced power level of 20.587 kW ERP.

This STA request has become necessary because our intended on-air date of July 1, 2005 precedes the availability of the permanent transmitter for this installation.

It is intended that the temporary transmitter operating at the reduced power level will be replaced by the permanent transmitter operating at the power level sufficient to generate the ERP of 50 kW upon its arrival at the site from the manufacturer.

All other auxiliary, ancillary and support equipment and material will be installed and operated with the temporary transmitter such that upon arrival of the permanent transmitter, it will directly replace the temporary transmitter but at the heightened power level sufficient to produce the 50 kW ERP per the CP.

The temporary transmitter is identified as follows:

LARCAN MX-1000U UHF Transmitter with the following characteristics:

Power: 1000 Watts, peak visual; 10% Aural

Frequency: Channel 50 (686-692 MHz.

Frequency Stability: +/- 1 kHz over temperature range

Harmonic Radiation: -60 dBc

Spurious Products: -60 dBc

As there are no proposed or intended alterations to the equipment as originally specified in support of the CP other than the operation at a reduced power level with a temporary transmitter, no interference would be expected to be caused to any other existing, authorized or proposed television station or CP.

Upon receipt of the permanent transmitter and its subsequent installation, the FCC will be promptly notified of the initiation of operation of the station KBGF-LP as specified in the CP as issued at 50 kW ERP.

Critical parameters of the KBGF-LP site are as follows:

- a) The effective radiated power (ERP) will be 20.587 kW**
- b) The channel will be 50 (Zero offset) at 686-692 MHz.**
- c) The antenna height above average terrain (HAAT) is 110.5 meters**
- d) The site height above mean sea level is 1070 meters**
- e) The antenna height above ground level (HAGL) is 97.5 meters**
- f) The antenna height above mean sea level (HAMSL) is 1167.5 meters**
- g) The antenna is a JAMPRO Model JA/LS-16 SHP**

h) The antenna pattern will be directional with a Jampro "Peanut" pattern oriented East-West and the antenna physically oriented 180 degrees True

i) The tower registration number is 1019013

**j) The site coordinates are: 47 Degrees, 32 Minutes, 19 Seconds North
111 Degrees, 15 Minutes, 41 Seconds West**

k) The tower height above ground level (AGL) is 152.4003 meters

Beartooth Communications affirms that the operation of this facility will be within the FCC Rules and Regulations.

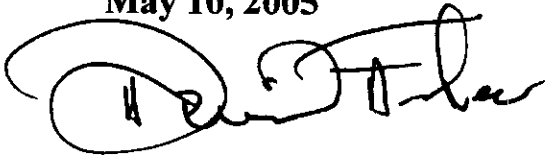
In accordance with IEEE/ANSI C95.1-1992, the proposed temporary transmitter will not cause non-ionizing radiation values on the ground in excess of the stated limits.

Applicant agrees to reduce power as necessary to avoid hazardous exposure to workers on the tower and to cooperate with other site occupants for safe access.

The preceding information and statements are true and correct to the best of my knowledge, belief and consulted resources.

**David Feher
Director of Engineering
Sunbelt Communications Co.**

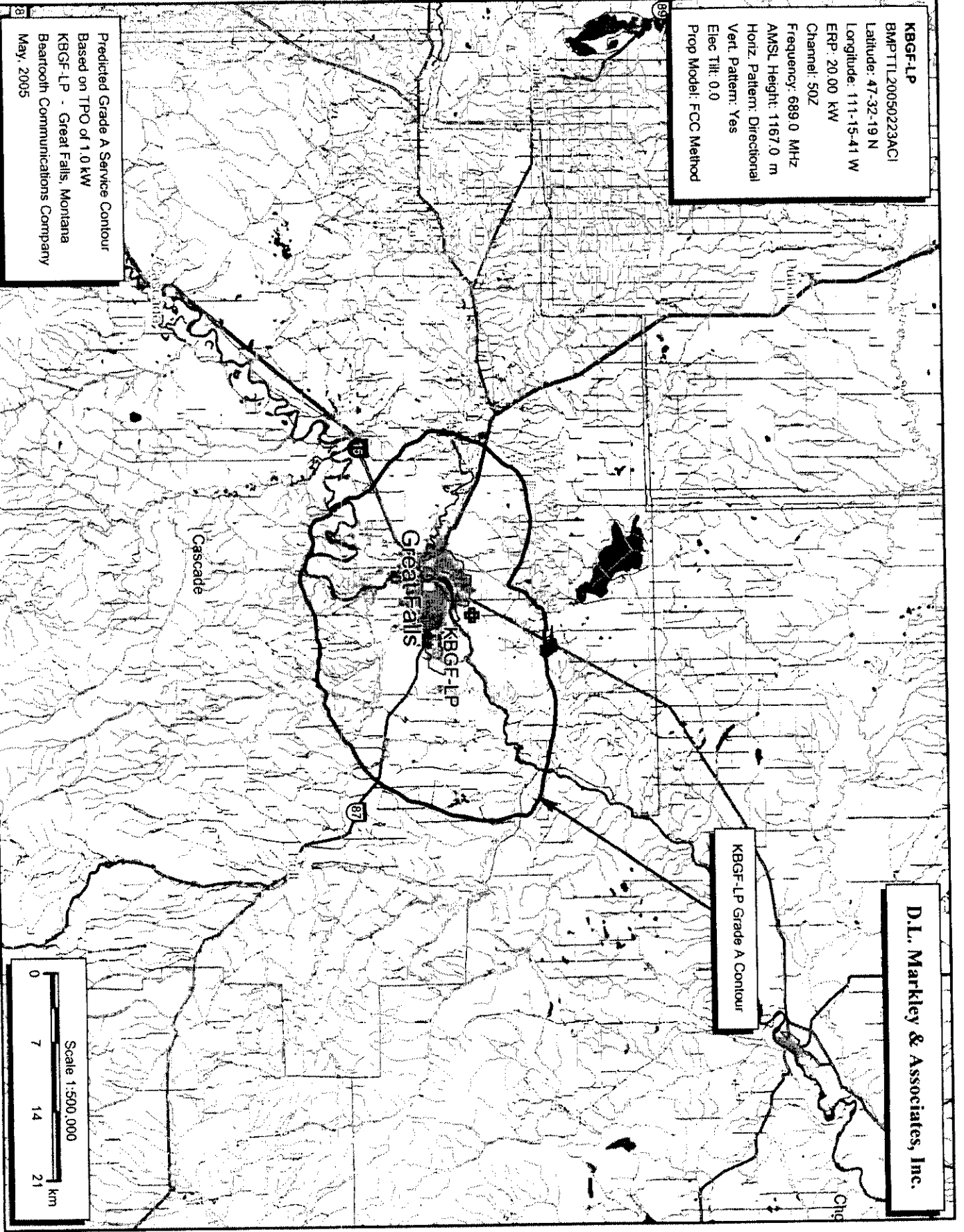
May 10, 2005

A handwritten signature in black ink, appearing to read 'D. Feher', with a large, stylized loop at the beginning.

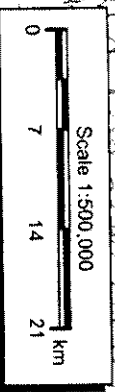
KBGF-LP
BMP: T120050223ACI
Latitude: 47-32-19 N
Longitude: 111-15-41 W
ERP: 20.00 kW
Channel: 502
Frequency: 689.0 MHz
AMSL Height: 1167.0 m
Hornz. Pattern: Directional
Vert. Pattern: Yes
Elec. Tilt: 0.0
Prop. Model: FCC Method

D.L. Markley & Associates, Inc.

KBGF-LP Grade A Contour



Predicted Grade A Service Contour
Based on TPO of 1.0 kW
KBGF-LP - Great Falls, Montana
Beartooth Communications Company
May, 2005





FEDERAL COMMUNICATIONS COMMISSION
445 12TH Street, S.W.
Washington DC 20554

JUN 7 2005

IN REPLY REFER TO: 100DEZ
M.H.

Beartooth Communications Company
1500 Foremaster Lane
Las Vegas, NV 89101

In re: LPTV or TV Translator Station of:
Beartooth Communications Company
KBGF-LP, Channel 50, Great Falls, MT
BSTA-20050513ADP
Fac. ID # 128063

Gentlemen:

This is in reference to your request for Special Temporary Authority to operate the above-captioned low power television or television translator station.

In light of the facts set forth therein, your request for Special Temporary Authority IS HEREBY GRANTED to operate the station in accordance with the specifications in your letter of May 12, 2005: Maximum Effective Radiated Power Towards Radio Horizon: 20.6 KW; Maximum Effective Radiated Power in any Horizontal and Vertical Angle: 20.6 KW; Antenna make: JAM, Model: JA/LS-PN-16; Antenna Orientation: 240, 250, 110 and 120 degrees true north; Frequency offset: Zero offset; Height of antenna radiation center above ground: 97.5 meters; Height of antenna radiation center above mean sea level: 1167.5 meters; Transmitting antenna coordinates: NL: 47-32-19, WL: 111-15-41; Obstruction marking and lighting specifications in accordance with antenna structure registration number: 1019013. This authority is conditioned upon the avoidance of interference to any existing facilities.

This authority expires December 7, 2005, and is subject to the attached condition.

Sincerely,

Hossein Hashemzadeh
Associate Chief
Video Division
Media Bureau

cc: Jonathan S. Lichstein, Esquire

Call Sign: KBGF-LP

Great Falls, MT

Special operating condition or restriction:

1. The authorization is conditioned upon the use of a transmitter that has been type accepted or meets Commission type acceptance requirements at a visual carrier frequency tolerance of plus/minus 1 kHz.